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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ASTRAZENECA AB, AKTIEBOLAGET
HÄSSLE, ASTRAZENECA LP, and
ZENECA INC.,

Plaintiffs,

v.

HEC PHARM CO., LTD., HEC PHARM
GROUP, and HEC PHARM USA INC.

Defendants.

Civil Action No. _____

**COMPLAINT FOR
PATENT INFRINGEMENT
AND CERTIFICATION PURSUANT TO
LOCAL CIVIL RULE 11.2**

Plaintiffs AstraZeneca AB, Aktiebolaget Hassle, AstraZeneca LP, and Zeneca Inc. (collectively, “Plaintiffs”), by their attorneys, for their Complaint against HEC Pharm Co., Ltd. (“HEC Co.”), HEC Pharm Group (“HEC Group”), and HEC Pharm USA Inc. (“HEC USA”), allege as follows:

NATURE OF THE ACTION

1. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 100 *et seq.*, and in particular under 35 U.S.C. § 271(e). This action relates to Abbreviated New Drug Application (“ANDA”) No. 207265 filed by or for the benefit of HEC Co., HEC Group, and HEC USA (collectively, “Defendants” or “HEC”) with the United States Food and Drug Administration (“FDA”) for approval to market generic versions of Plaintiffs’ NEXIUM® pharmaceutical products that are sold in the United States.

THE PARTIES

2. Plaintiff AstraZeneca AB (“AZ AB”) is a corporation operating and existing under the laws of the Sweden, with its principal place of business at S-151 85 Södertälje, Sweden.

3. Plaintiff Aktiebolaget Hässle (“Hässle”) is a corporation organized and existing under the laws of Sweden, having its principal place of business at Mölndal, Sweden.

4. Plaintiff AstraZeneca LP (“AZ LP”) is a limited partnership operating and existing under the laws of the State of Delaware, with its principal place of business at 1800 Concord Pike, Wilmington, Delaware 19803. AZ LP holds an approved New Drug Application from the FDA for an esomeprazole magnesium formulation which it sells under the name NEXIUM®.

5. Plaintiff Zeneca Inc. (“Zeneca”) is a Delaware corporation having its principal place of business at Wilmington, Delaware. Zeneca has exclusive rights in the United States to market and sell products covered by United States Patent Nos. 6,369,085; 7,411,070; and 8,466,175.

6. Upon information and belief, HEC Pharm Group (“HEC Group”), is a company organized and existing under the laws of China, having its principal place of business at Dong Yang Guang Park, Shangsha, Chang’an, Dongguan, Guangdong, 523871, China. Upon information and belief, HEC Group is in the business of developing, manufacturing, marketing, and selling generic drugs. Upon information and belief, HEC Group established Defendants HEC Pharm Co., Ltd. and HEC Pharm USA Inc. for the purpose of manufacturing, distributing, marketing, and selling its generic drug products throughout the United States.

7. Upon information and belief, HEC Pharm Co., Ltd. (“HEC Co.”) is a company organized and existing under the laws of China, having its principal place of business at Binjiang Road 62, Yidu, Yichang, 443300, Hubei, China. Upon information and belief, HEC Co. develops, manufactures and/or distributes generic drug products for marketing, sale, and/or use throughout the United States.

8. Upon information and belief, based in part on representations on their website at URL www.hecpharm.com, HEC Group and HEC Co. hold themselves out as a unitary entity. Upon information and belief, HEC Group and HEC Co., themselves and through their U.S. agent, Defendant HEC Pharm USA Inc., manufacture and/or distribute generic drugs for sale and use throughout the United States.

9. Upon information and belief, HEC Pharm USA Inc. (“HEC USA”) is a company organized and existing under the laws of New Jersey, having its principal place of business at

116 Village Blvd, Suite 200, Princeton, NJ 08540. Upon information and belief, HEC USA is the U.S. agent of HEC Group and HEC Co., wherein following FDA approval of an ANDA, HEC Co. manufactures and supplies the approved generic product to HEC USA, which then markets and sells the product throughout the United States at the direction, under the control, and for the direct benefit of HEC Co. and HEC Group.

10. Upon information and belief, HEC Co.'s preparation and submission of ANDA No. 207265 was done at the direction, under the control, and for the direct benefit of HEC Group.

11. On information and belief, Defendant HEC USA is a corporation organized and existing under the laws of the State of New Jersey, having its principal place of business at 73 Route 31 North, Pennington, New Jersey 08534.

12. Upon information and belief, following any FDA approval of ANDA No. 207265, HEC Co. itself and through its U.S. agent, HEC USA, will make, use, offer to sell, and/or sell the generic drug products that are the subject of ANDA No. 207265 throughout the United States, and/or import such generic drug products into the United States.

BACKGROUND

The NDA

13. AZ LP is the holder of New Drug Application ("NDA") No. 21153 for NEXIUM® Esomeprazole Magnesium Delayed-Release Tablets, in 20 mg and 40 mg dosage forms. NEXIUM® is a prescription drug approved for use to relieve the symptoms of acid reflux disease and treat erosive esophagitis. Esomeprazole magnesium trihydrate is the active ingredient in NEXIUM®.

The Patents-in-Suit

14. United States Patent No. 6,369,085 (“the ’085 patent”), entitled “Form of S-Omeprazole,” was duly and legally issued by the United States Patent and Trademark Office (“the USPTO”) on April 9, 2002 to AZ AB, upon assignment from the inventors Hanna Cotton, Anders Kronstrom, Anders Mattson, and Eva Möller. The ’085 patent claims, *inter alia*, magnesium salts of esomeprazole trihydrate, pharmaceutical compositions comprising the claimed salts, methods of treatment using the claimed salts, and processes for preparing the claimed salts. A true and correct copy of the ’085 patent is attached as Exhibit A.

15. Plaintiff AZ AB has been and still is the owner of the ’085 patent. The ’085 patent will expire on May 25, 2018, and pediatric exclusivity relating to the ’085 patent expires on November 25, 2018.

16. United States Patent No. 7,411,070 (“the ’070 patent”), entitled “Form of S-omeprazole,” was duly and legally issued by the USPTO on August 12, 2008 to AZ AB upon assignment from inventors Hanna Cotton, Anders Kronstrom, Anders Mattson, and Eva Moller. The claims of the ’070 patent are directed to, *inter alia*, magnesium salts of esomeprazole trihydrate and processes for preparing the claimed salts. A true and correct copy of the ’070 patent is attached as Exhibit B.

17. Plaintiff AZ AB has been and still is the owner of the ’070 patent. The ’070 patent will expire on May 25, 2018, and pediatric exclusivity relating to the ’070 patent expires on November 25, 2018.

18. United States Patent No. 8,466, 175 (“the ’175 patent”), entitled “Form of S-omeprazole,” was duly and legally issued by the USPTO on June 18, 2013 to AZ AB upon assignment from inventors Hanna Cotton, Anders Kronstrom, Anders Mattson, and Eva Moller.

The claims of the '175 patent are directed to, *inter alia*, methods of treating *Helicobacter* infections comprising administration of magnesium salts of esomeprazole trihydrate. A true and correct copy of the '175 patent is attached as Exhibit C.

19. Plaintiff AZ AB has been and still is the owner of the '175 patent. The '175 patent will expire on May 25, 2018, and pediatric exclusivity relating to the '175 patent expires on November 25, 2018.

The ANDA

20. On information and belief, HEC Co. filed ANDA No. 207265 with the FDA under 21 U.S.C. § 355(j) to obtain FDA approval for the commercial manufacture, use, importation, offer for sale, and sale in the United States of esomeprazole magnesium delayed-release tablets, 20 mg and 40 mg ("HEC's Esomeprazole Magnesium Delayed-Release Tablets"), which are generic versions of Plaintiffs' NEXIUM® Esomeprazole Magnesium Delayed-Release Tablets, in 20 mg and 40 mg dosage forms.

21. By letter dated June 23, 2015 (the "ANDA Notice Letter"), HEC Co. notified Plaintiffs that HEC Co. had filed ANDA No. 207265 seeking approval to market HEC's Esomeprazole Magnesium Delayed-Release Tablets and that HEC Co. was providing information to Plaintiffs pursuant to 21 U.S.C. § 355(j)(2)(B) and 21 C.F.R. § 314.95.

22. On information and belief, HEC Co. manufactures products sold by HEC USA in New Jersey and throughout the United States.

JURISDICTION AND VENUE

23. Subject matter jurisdiction over this action is proper pursuant to the provisions of Title 28, United States Code, Sections 1331 and 1338(a).

24. On information and belief, Defendant HEC USA is a corporation organized and existing under the laws of the State of New Jersey, having its principal place of business at 73 Route 31 North, Pennington, New Jersey 08534.

25. On information and belief, HEC USA, either directly or through one or more of its wholly owned subsidiaries and/or agents, develops, manufactures, distributes, markets, offers to sell, and sells generic drug products for sale and use throughout the United States, including within the judicial district.

26. On information and belief, HEC Group and HEC Co., with the assistance and/or at the direction of HEC USA, develops, manufactures, distributes, markets, offers to sell, and sells generic drug products for sale and use throughout the United States, including within the judicial district.

27. On information and belief, Defendants are in the business of developing, formulating, manufacturing, marketing, offering to sell, selling, and commercializing pharmaceutical products.

28. On information an belief, Defendants acted in concert to develop HEC's Esomeprazole Magnesium Delayed-Release Tablets and to seek approval from the FDA to sell HEC's Esomeprazole Magnesium Delayed-Release Tablets throughout the United States, including within this judicial district.

29. On information and belief and as stated in the ANDA Notice Letter, HEC Co. prepared and filed ANDA No. 207265.

30. On information and belief and as stated in the ANDA Notice Letter, the FDA received ANDA No. 207265 from HEC Co.

31. On information and belief by virtue of, *inter alia*, HEC Group and HEC Co.'s relationship with HEC USA in connection with the preparation and/or filing of ANDA No. 207265 and the sales-related activities of Defendants in New Jersey, including but not limited to the substantial, continuous, and systematic distribution, marketing, and/or sales of pharmaceutical products to residents of New Jersey, this Court has personal jurisdiction over HEC Group and HEC Co.

32. On information and belief, HEC has admitted that this Court has personal jurisdiction over HEC by filing a motion to dismiss in the District of Delaware requesting, in the alternative, transfer to the District of New Jersey because that judicial district "has personal jurisdiction over [the HEC] parties." HEC Br. in Supp. of Mot. to Dismiss (Dkt. 13), *Novartis AG v. HEC Pharm Co.*, No. 1:15-cv-00151 (D. Del. Mar. 2, 2015).

33. On information and belief, by virtue of, *inter alia*, Defendants' continuous and systematic contacts with New Jersey, including but not limited to the above-described contacts, and the actions on behalf of Defendants in connection with ANDA No. 207265, this Court has personal jurisdiction over Defendants. These activities satisfy due process and confer personal jurisdiction over Defendants consistent with New Jersey law.

34. Venue is proper in this District pursuant to the provisions of Title 28, United States Code, Sections 1391(c) and (d), and 1400 (b).

COUNT 1: INFRINGEMENT OF THE '085 PATENT

35. Plaintiffs incorporate by reference paragraphs 1-34 of this Complaint as if fully set forth herein.

36. On information and belief, Defendants submitted ANDA No. 207265 to the FDA under 21 U.S.C. § 355(j) in order to obtain approval to market HEC's Esomeprazole Magnesium Delayed-Release Tablets in the United States before the expiration of the '085 patent.

37. By their ANDA Notice Letter, Defendants informed Plaintiffs that they had submitted to the FDA, pursuant to 21 U.S.C. § 355(j)(2)(A)(vii)(IV), a certification alleging that the '085 patent is invalid, unenforceable, or will not be infringed by the commercial manufacture, use, sale, offer for sale, or importation into the United States of HEC's Esomeprazole Magnesium Delayed-Release Tablets.

38. Under 35 U.S.C. § 271(e)(2)(A), the submission by Defendants to the FDA of ANDA No. 207265 to obtain approval for the commercial manufacture, use, sale, offer for sale, or importation into the United States of HEC's Esomeprazole Magnesium Delayed-Release Tablets before the expiration of the '085 patent constitutes infringement of one or more claims of the '085 patent, either literally or under the doctrine of equivalents.

39. On information and belief, HEC's Esomeprazole Magnesium Delayed-Release Tablets, if approved by the FDA, will be prescribed and administered to human patients in a therapeutically effective amount to inhibit gastric acid secretion and for the treatment of gastrointestinal inflammatory disease. On information and belief, this administration will occur at Defendants' active behest and with their intent, knowledge, and encouragement. On information and belief, Defendants will actively encourage, aid and abet this administration with knowledge that it is in contravention of Plaintiffs' rights under the '085 patent.

40. The ANDA Notice Letter, which is required by statute and regulation to provide a full and detailed explanation regarding all defenses, does not allege invalidity or unenforceability

of any claims of the '085 patent. By not alleging invalidity or unenforceability, Defendants effectively admit that the '085 patent is both valid and enforceable.

41. Plaintiffs will be substantially and irreparably harmed by the infringing activities described above unless those activities are precluded by this Court. Plaintiffs have no adequate remedy at law.

COUNT 2: INFRINGEMENT OF THE '070 PATENT

42. Plaintiffs incorporate by reference paragraphs 1-41 of this Complaint as if fully set forth herein.

43. On information and belief, Defendants submitted ANDA No. 207265 to the FDA under 21 U.S.C. § 355(j) in order to obtain approval to market HEC's Esomeprazole Magnesium Delayed-Release Tablets in the United States before the expiration of the '070 patent.

44. By their ANDA Notice Letter, Defendants informed Plaintiffs that they had submitted to the FDA, pursuant to 21 U.S.C. § 355(j)(2)(A)(vii)(IV), a certification alleging that the '070 patent is invalid, unenforceable, or will not be infringed by the commercial manufacture, use, sale, offer for sale, or importation into the United States of HEC's Esomeprazole Magnesium Delayed-Release Tablets.

45. Under 35 U.S.C. § 271(e)(2)(A), the submission by Defendants to the FDA of ANDA No. 207265 to obtain approval for the commercial manufacture, use, sale, offer for sale, or importation into the United States of HEC's Esomeprazole Magnesium Delayed-Release Tablets before the expiration of the '070 patent constitutes infringement of one or more claims of the '070 patent, either literally or under the doctrine of equivalents.

46. On information and belief, HEC's Esomeprazole Magnesium Delayed-Release Tablets, if approved by the FDA, will be prescribed and administered to human patients in a

therapeutically effective amount to inhibit gastric acid secretion and for the treatment of gastrointestinal inflammatory disease. On information and belief, this administration will occur at Defendants' active behest and with their intent, knowledge, and encouragement. On information and belief, Defendants will actively encourage, aid and abet this administration with knowledge that it is in contravention of Plaintiffs' rights under the '070 patent.

47. The ANDA Notice Letter, which is required by statute and regulation to provide a full and detailed explanation regarding all defenses, does not allege invalidity or unenforceability of any claims of the '070 patent. By not alleging invalidity or unenforceability, Defendants effectively admit that the '070 patent is both valid and enforceable.

48. Plaintiffs will be substantially and irreparably harmed by the infringing activities described above unless those activities are precluded by this Court. Plaintiffs have no adequate remedy at law.

COUNT 3: INFRINGEMENT OF THE '175 PATENT

49. Plaintiffs incorporate by reference paragraphs 1-48 of this Complaint as if fully set forth herein.

50. On information and belief, Defendants submitted ANDA No. 207265 to the FDA under 21 U.S.C. § 355(j) in order to obtain approval to market HEC's Esomeprazole Magnesium Delayed-Release Tablets in the United States before the expiration of the '175 patent.

51. By their ANDA Notice Letter, Defendants informed Plaintiffs that they had submitted to the FDA, pursuant to 21 U.S.C. § 355(j)(2)(A)(vii)(IV), a certification alleging that the '175 patent is invalid, unenforceable, or will not be infringed by the commercial manufacture, use, sale, offer for sale, or importation into the United States of HEC's Esomeprazole Magnesium Delayed-Release Tablets.

52. Under 35 U.S.C. § 271(e)(2)(A), the submission by Defendants to the FDA of ANDA No. 207265 to obtain approval for the commercial manufacture, use, sale, offer for sale, or importation into the United States of HEC's Esomeprazole Magnesium Delayed-Release Tablets before the expiration of the '175 patent constitutes infringement of one or more claims of the '175 patent, either literally or under the doctrine of equivalents.

53. On information and belief, HEC's Esomeprazole Magnesium Delayed-Release Tablets, if approved by the FDA, will be prescribed and administered to human patients in a therapeutically effective amount to inhibit gastric acid secretion and for the treatment of gastrointestinal inflammatory disease, including *Helicobacter* infection. On information and belief, this administration will occur at Defendants' active behest and with their intent, knowledge, and encouragement. On information and belief, Defendants will actively encourage, aid and abet this administration with knowledge that it is in contravention of Plaintiffs' rights under the '175 patent.

54. The ANDA Notice Letter, which is required by statute and regulation to provide a full and detailed explanation regarding all defenses, does not allege invalidity or unenforceability of any claims of the '175 patent. By not alleging invalidity or unenforceability, Defendants effectively accept the statutory presumption that the '175 patent is both valid and unenforceable.

55. Plaintiffs will be substantially and irreparably harmed by the infringing activities described above unless those activities are precluded by this Court. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

- A. A judgment that the claims of the '085, '070, and '175 patents are valid and enforceable;
- B. A judgment that the submission of ANDA No. 207265 by Defendants infringes one or more claims of each of the '085, '070, and '175 patents under 35 U.S.C. § 271(e)(2);
- C. A judgment providing that, pursuant to 35 U.S.C. § 271(e)(4)(A), the effective date of any FDA approval of Defendants' ANDA No. 207265 shall be no earlier than the latest expiration date of the patents-in-suit and any additional periods of exclusivity;
- D. A judgment pursuant to 35 U.S.C. § 271(e)(4)(B) permanently enjoining Defendants, and all persons acting in concert with any of them, from making, using, selling, offering to sell, or importing the esomeprazole magnesium product described in Defendants' ANDA No. 207265 prior to the latest expiration of the patents-in-suit and any additional periods of exclusivity;
- E. Attorneys' fees in this action pursuant to 35 U.S.C. § 285;
- F. Costs and expenses in this action; and
- G. Such further and other relief as this Court may deem just and proper.

Dated: August 5, 2015

Respectfully submitted,

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CERTIFICATION PURSUANT TO L. CIV. R. 11.2

Pursuant to Local Civil Rule 11.2, I hereby certify that the matter in controversy is related to the subject matter of the following actions:

- *ASTRAZENECA AB, AKTIEBOLAGET HÄSSLE, ASTRAZENECA LP, KBI INC., and KBI-E INC. v. MYLAN LABORATORIES LTD. and MYLAN, INC.*, C.A. No. 3:12-cv- 01378-MLC-TJB (District of New Jersey)
- *ASTRAZENECA AB, AKTIEBOLAGET HÄSSLE, ASTRAZENECA LP, KBI INC., and KBI-E INC. v. WATSON LABORATORIES, INC. – FLORIDA*, C.A. No. 3:13-cv-01669- MLC-TJB (District of New Jersey)
- *ASTRAZENECA AB, AKTIEBOLAGET HÄSSLE, ASTRAZENECA LP, KBI INC., and KBI-E INC. v. WOCKHARDT LIMITED and WOCKHARDT USA LLC*, C.A. No. 3:13- cv-04854-MLC-TJB (District of New Jersey)
- *ASTRAZENECA AB, AKTIEBOLAGET HÄSSLE, ASTRAZENECA LP, KBI INC., and KBI-E INC. v. AUROBINDO PHARMA LIMITED and AUROBINDO PHARMA USA Inc.*, C.A. No. 3:13-cv-7298-MLC-TJB (District of New Jersey)
- *ASTRAZENECA AB, AKTIEBOLAGET HÄSSLE, ASTRAZENECA LP, KBI INC., and KBI-E INC. v. KREMERS URBAN PHARMACEUTICALS, KREMERS URBAN DEVELOPMENT CO., and KREMERS URBAN LLC*, C.A. No. 3:13-cv-7299-MLC-TJB (District of New Jersey)
- *ASTRAZENECA AB, AKTIEBOLAGET HÄSSLE, ASTRAZENECA LP, KBI INC., and KBI-E INC. v. ZYDUS PHARMACEUTICALS (USA) INC., and CADILA HEALTHCARE LTD. (dba ZYDUS CADILA)*, C.A. No. 3:14-cv-4782-MLC-TJB (District of New Jersey)
- *ASTRAZENECA AB, AKTIEBOLAGET HÄSSLE, ASTRAZENECA LP, and ZENECA INC. v. ACTAVIS LABORATORIES FL, INC., and ACTAVIS PHARMA, INC.*, C.A. No. 3:14-cv-7263-MLC-TJB (District of New Jersey)
- *ASTRAZENECA AB, AKTIEBOLAGET HÄSSLE, ASTRAZENECA LP, and ZENECA INC. v. ACTAVIS LABORATORIES FL, INC., and ACTAVIS PHARMA, INC.*, C.A. No. 3:14-cv-7870-MLC-TJB (District of New Jersey)
- *ASTRAZENECA AB, AKTIEBOLAGET HÄSSLE, ASTRAZENECA LP, and ZENECA INC. v. ANDRX LABS, LLC, ANDRX CORPORATION, and ACTAVIS, INC.*, C.A. No. 3:14-cv-8030-MLC-TJB (District of New Jersey)
- *ASTRAZENECA AB, AKTIEBOLAGET HÄSSLE, ASTRAZENECA LP, and ZENECA INC. v. PERRIGO COMPANY PLC, PERRIGO COMPANY, L. PERRIGO COMPANY, and PADDOCK LABORATORIES, LLC*, C.A. No. 3:15-cv-1057-MLC-TJB (District of New Jersey)

Date: August 5, 2015

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